

EXHIBIT 1

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**Pre-Sentencing Memorandum in the Matter of Daniel Capaldo,
Docket No. 0207 1: 19CR00442(S-3)-004(BMC)**

Purpose of this report

The undersigned is a Licensed Private Investigator and Licensed Clinical Social Worker (LCSW) in the State of New York. I was requested by attorney Peter J. Guadagnino to prepare a Pre-Sentencing Memorandum in the matter of Daniel J. Capaldo, Date of Birth 1/6/1965.

On November 24, 2020, Mr. Capaldo pled guilty to three racketeering acts and will be sentenced on March 23, 2022.

Included in this report is medical documentation, character references, and other data that will support leniency in sentencing.

Personal Background Data

Mr. Capaldo was born on January 6, 1965, in Brooklyn, New York. At that time, his mother, Cynthia, who grew up in New York City's foster care system, was 20 years old. She and Mr. Capaldo's father, also named Daniel, divorced when he was 3 years old.

As a youngster, Mr. Capaldo was raised by his mother, who later became a licensed real estate broker and onetime head of the Bensonhurst Tenant Council in Brooklyn. She died in 2001, at the age of 55, from lung cancer.

Mr. Capaldo's father remarried and started a new family that included two sons. He lived near young Daniel and his mother, but his visits were sporadic and unpredictable. Daniel recalls waiting by the window for his father to come visit, which he rarely did. As a result, Daniel became so traumatized his mother put him in counseling when he was 10 years old, which was very unusual for that era. Between the ages of 11 and 18, Daniel's interactions with his father were minimal.

(These adverse childhood experiences would have a profound, but ultimately positive effect on Mr. Capaldo's life when he became a first-time parent at the age of 50).

Mr. Capaldo graduated from James Madison High School in 1983. After graduation he went to work as a laborer in the construction field. Because of his lack of a positive male influence in his life, Mr. Capaldo became involved with local criminals in his neighborhood. This provided him with a sense of safety and belonging, but, he says, "broke my mother's heart."

Mr. Capaldo was arrested for acting in concert during two drug sales in 1992. Despite being a first-time offender, he was sentenced to 11 years to life in state prison. While serving time at the Fishkill Correctional Facility, he enrolled in classes at Sullivan County Community College and earned an Associate Degree in Drug and Alcohol Counseling.

While incarcerated at Fishkill in 1995, he was arrested for a drug-related incident that occurred prior to his incarceration three years earlier. He was subsequently sentenced to 14 years in federal prison – to be served concurrently with the state sentence.

Upon his parole from federal custody in 2008, Mr. Capaldo went to work at CDC Commercial Design Corp., a Brooklyn-based home renovation company that is owned by his half-brother, Christopher Capaldo.

As a field supervisor, Mr. Capaldo was involved in maintaining supply lists, logistics, layouts, and supervising suppliers and employees. He worked approximately 60 to 70 hours per week and earned about \$70,000 per year.

Also in 2008, Mr. Capaldo met a cosmetologist named Katarzyna Lockhart, whom he married in 2009. Mr. Capaldo and Katarzyna hoped to start an immediate family, but Katarzyna was unable to conceive. The couple engaged in 3 invitro procedures, all of which were unsuccessful. The heartbroken couple was looking into a domestic adoption when Mr. Capaldo was arrested for Unlawful Debt Collection in 2011 and ultimately served 35 months in federal prison.

Holding out hope that he and his wife would be able to conceive after medical intervention, Mr. had his sperm frozen prior to being sentenced. Shortly thereafter, Katarzyna became pregnant but lost the baby at 8 weeks.

When Mr. Capaldo was released from federal custody in June 2016, Katarzyna was 6 months pregnant with what the couple now call their “miracle baby.” Their daughter Alexandra was born on October 7, 2015. Mr. Capaldo was 50 years old, and Katarzyna was 43.

Mr. Capaldo describes his daughter’s birth as “the best thing that ever happened to me.” Her presence in his life resulted in him recalling feeling abandoned and ignored by his own father. As a result, he vowed, “To be the best father I can be to my daughter. She deserves that. All children deserve that.”

Mr. Capaldo resumed working for his half-brother, overseeing apartment renovations, mostly in Manhattan.

Mr. Capaldo was gainfully employed by CDC until his arrest for his current charges on October 3, 2019. He was initially remanded to the Metropolitan Detention Center in Brooklyn.

Because he had an array of medical conditions that put him at high risk of contracting COVID-19, Mr. Capaldo was released to strict home confinement on March 30, 2020. Since then, he has complied with all Court-ordered conditions of release.

Medical conditions

Mr. Capaldo is currently afflicted with the following medical conditions, several of which would put him in great danger if he was to contract COVID-19 or its variants.

Asthma: Prescribed Albuterol Sulfate (2.5 mg), Azelastine (HCl 137), Fluticasone Furoate (100 MCG). All are nasal inhalers.

Bronchitis (Acute)

Cardiac care for mild valvular heart disease and mild dense carotid plaque.

Chronic Obstructive Pulmonary Disease (Acute)

Gastroesophageal Reflux Disease (GERD): Prescribed Famotidine, 40 mg., 1 tablet every 2 days.

Hyperlipidemia (high cholesterol): Prescribed Atorvastatin, 40 mg., 1x daily.

Hypertension: Prescribed Lisinopril, 20 mg., 1x daily.

Arthritis in the hips, shoulder, elbow, spine, and both knees. Prescribed Naproxen, 375 mg., 1 tablet every 12 hours or as needed and Meloxicam, 15 mg., 1x daily.

Bilateral Hip and Right Knee Degenerative Joint Disease.

Enchondroma of the Left Knee (a non-cancerous bone tumor that begins in the cartilage).

Osteoarthritis of the Hands.

Osteoarthritis of the Knees.

Osteoarthritis of the Hips: Had right hip replacement in March 2021. Left hip demonstrates severe Degenerative Joint Disease (DJD) with bone-on-bone contact.

Psoriatic Arthritis (PsA): a chronic inflammatory disease that occurs when the immune system mistakenly attacks healthy joints and skin.

Tinnitus, Right Ear

COVID-19: Mr. Capaldo tested positive for COVID-19 in January 2022 and was prescribed steroids for high fever and breathing issues. He was forced to utilize a Nebulizer infused with Albuterol to enable him to breathe. As a result of his incessant coughing, Mr. Capaldo's vocal cords were inflamed, which still causes him significant daily pain.

Mitigating factors related to medical history

According to data provided by the Center for Disease Control (CDC), Mr. Capaldo has several underlying medical conditions that put him not only at a higher risk to contract COVID-19, but also have a more severe outcome.

These include asthma, hypertension, valvular heart disease, GERD, Chronic Obstructive Pulmonary Disease (Acute), and Bronchitis.

In addition, degenerative joint disease does not heal on its own and, according to Mr. Capaldo's orthopedic surgeon, "can ultimately get worse over time [and] right hip replacement and right knee replacement is inevitable."

Mr. Capaldo's myriad health issues have resulted in him being treated by numerous specialists, many of whom have written letters on his behalf. Due to his age and various co-morbidities, he is in danger of contracting COVID-19 if committed to a prison environment.

Moreover, many of his orthopedic needs will likely result in requisite surgery in the near future.

Mitigating factors related to family

Since being on strict home confinement, Mr. Capaldo has not been able to leave his home for anything other than medical appointments. This has caused a great financial burden to the family. What makes that more emotionally challenging is the fact that Mr. Capaldo's half-brother views

Still, Mr. Capaldo and his wife view the strict home confinement as a “mixed blessing.” Not only has Mr. Capaldo adhered to all the associated rules with no violations, but it has also brought the family closer together.

Because his wife is employed full-time as a cosmetologist, Mr. Capaldo has acted as a full-time father to their daughter. During the worst months of the pandemic, when schools were closed, Mr. Capaldo set aside a certain number of hours per day that he would home-school his daughter. These hours were strictly adhered to so Alexandra would garner the benefits of daily regimentation in a simulated classroom environment.

Mr. Capaldo proved to be an exemplary teacher. Not only did he teach Alexandra to read and write, under his guidance her proficiency in mathematic improved significantly. Moreover, she was genuinely excited by the fact that she had a better understanding of math, which had previously been daunting for her.

The relationship between father and daughter, which had always been strong, blossomed even more. Being able to spend so much quality time and being an integral part of his daughter’s life and positive development made Mr. Capaldo reflective and introspective of his own childhood – which led to so many poor choices as an adult.

Mr. Capaldo realized more than ever the value he brings to the family as a husband and father. He describes his relationship with his daughter as “indomitable” and is committed to making it even stronger by vowing to put his criminal past behind him once and for all.

Strengths of Client

Mr. Capaldo has an abundance of strengths that warrant him being considered for leniency. Although he had a difficult childhood, he acknowledges that many people had similar beginnings but did not engage in criminal behavior. He accepts responsibility for his actions and while expressing regret makes no excuses for them.

Although Mr. Capaldo has made many poor choices in his life, he has also made many good ones. For example, when he was first sentenced to prison in the early 1990s, he immediately enrolled in a college program and within a few years earned an Associate Degree in Drug and Alcohol Counseling.

This led to him being assigned to an Honor Block where he was given the opportunity to participate in and complete a program to become a Certified Animal Handler. This resulted in him training dogs to service the blind.

Mr. Capaldo’s half-brother Christopher, who employed him at his construction company, called him “a big asset to my business” and described him as “a very hard worker” who was “always the first one on the jobs” and is a great team leader.”

Moreover, said Christopher, “I can only wish for when Daniel would return to his position in my company.”

Mr. Capaldo’s other half-brother, Derek Capaldo, said that despite the many mistakes Mr. Capaldo has made, “He is a model husband, father, son, brother, uncle, friend, and so much more to so many people.”

Mr. Capaldo’s wife, Katarzyna, said her husband is “an unbelievable father” who became his daughter’s “teacher and caregiver” during the pandemic.

“He has taught her to read and write, as well as mathematics,” said Katarzyna. “Since school opened back up, she has excelled.”

Numerous letters attesting to his rehabilitation, character and commitment to his family are included with this report.

Social Worker Assessment & Observations

As a Licensed Clinical Social Worker, I have observed many examples of family dynamics – nearly all of them negative. The dynamic in the Capaldo household is anything but negative.

The love is bountiful and pure, made stronger by the fact that Mr. Capaldo and Katarzyna worked so hard and endured so much hardship and heartache to become parents. Alexandra is the center of their world, and the bond between the parents seems as strong as their mutual bond with the child.

The challenges associated with fertility, incarceration, and the pandemic have destroyed many marriages and relationships but has only strengthened the bond and mutual love and respect in the Capaldo household.

Katarzyna is extremely grateful at how her husband cared for their daughter during these difficult times, as well as how they weathered the storm of the pandemic as an emotionally intact family unit.

The bond between Alexandra and her parents is clearly evident and there is no doubt that having her father leave home would create a catastrophic seismic shift in the family.

Moreover, Mr. Capaldo's training as an alcohol and drug counselor, coupled with the circumstances of the past few years, has made him reflective and introspective about his past, present, and future. He recognizes the errors of his past ways, and he welcomes the challenges that will come once he is able to resume his life as a working man and a father and husband.

At the age of 57, Mr. Capaldo seems strengthened by his past indiscretions and challenges and the chances of him reoffending is unlikely.

"I'm done with the past," he said. "I can't wait for it to be over. I just want to go back to work, come home to my family, do the right thing, and make my family proud of me."

Respectfully submitted,

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